

**Testimony of Ted Sturdevant
Executive Director
Washington State Department of Ecology
Before the
Subcommittee on Commerce, Trade and Consumer Protection
Committee on Energy & Commerce
U.S. House of Representatives**

March 4, 2010

I appreciate the opportunity to testify on this important issue. My name is Ted Sturdevant, and I am the Director of the Washington State Department of Ecology. In Washington State, we have made the reduction of toxic threats one of our top strategic priorities. One of the foundations of that effort has been our focus on phasing out persistent, bioaccumulative toxics, or PBTs.

I am not a scientist, and I'm sure you will hear from others more qualified to speak to the unique dangers posed by PBTs. These chemicals are often called "the worst of the worst" because they persist in the environment, they build up in our bodies and the food chain, and they are toxic. Over 10 years ago, we recognized that if we were serious about protecting human health and the environment in Washington from toxic contamination, PBTs were the right place to start. Washington was the first state in the nation to target PBTs, developing a PBT strategy in 2000 and adopting regulations in 2006 to phase out their uses and releases. We have since developed and implemented chemical action plans on mercury, PBDE flame retardants and lead, and we are now beginning work on PAHs, or polycyclic aromatic hydrocarbons.

This approach has resulted in the collection and proper disposal of over 14,000 pounds of mercury that otherwise might have been released to the environment or led to human exposure, and helped shape the national program to remove mercury switches from automobiles.

It also led to the nation's first ban on decaBDE, a commonly used flame retardant, after years of research and a great deal of political opposition. Since then, several other states have banned decaBDE, and recently the EPA announced the phase-out of decaBDE production in the U.S. And our action plan on lead resulted in a ban on lead wheel weights, and ongoing work to eliminate the threat of exposure among children to lead paint in older homes.

That may sound like I'm boasting of our success, but the truth is that our approach to protecting people and our environment from toxic chemicals is a failure. It's a failure at the state level, and it's a failure at the national level. We are failing to prevent avoidable harm to our children, we are failing to protect the food chain that sustains us, we are failing to save countless millions of taxpayer dollars that are wasted on health care costs and environmental cleanup, and we are failing to exercise common sense.

After working on toxics issues for the past several years, I have found that behind the science, behind the congeners and the acronyms and the chemistry, the core of this debate is actually quite simple, and it all comes down to common sense, and the old adage that an ounce of prevention is worth a pound of cure. I think the basic principles for a rational chemicals management policy are these:

First: before you allow a substance to be put into widespread use and commerce, it makes sense to take all reasonable measures to first make sure it is safe.

Second: if science tells us that there are toxic chemicals that pose an urgent and unacceptable threat, government should be able to protect the public and ban those chemicals.

Third: if we know with reasonable certainty that a particular substance is dangerous to people or the food chain and doesn't break down; and if we know that allowing continued use of that substance will spread it far and wide; and if there is an alternative substance that could perform the same task much more safely; then the right policy is simple: stop using the dangerous substance, and use the safer alternative. In the case of PBTs, we already know enough that we should make every effort to phase out current uses and prevent new uses.

These concepts seem to me to be sound, fair principles for a reasonable chemicals policy. But none of these principles – precaution, targeted bans when needed, or encouraging the use of safer alternatives – describes current policy. Instead, the burden of proof is on EPA to prove a chemical unsafe, without the proper tools or data to do that job. And even in instances where safer alternatives exist for a chemical for which there is clear cause for concern, there is no effective mechanism to require or encourage switching to the safer alternative.

PCBs provide a good example of how the system doesn't work. The production of PCBs began in the 1920's, and by the 1930's there were already studies suggesting that PCBs were harmful to humans. Production and use continued to increase, as did the data warning of concerns. The EPA finally banned PCBs in 1979, after more than 50 years of widespread use. Since then,

despite the ban and millions of private and taxpayer dollars spent on PCB cleanup in Washington State, significant amounts of PCBs continue to flow into Puget Sound today.

This is a critical point; when we put persistent toxics out into the world, they persist. And if they turn out to be a problem, then the problem becomes enormous, and largely unsolvable.

Once out, we cannot ever truly put the PBT genie back in the bottle. This has been an expensive lesson that we all should learn from – when we uncork that bottle, let's be as sure as we can that it makes sense to do so.

Without a system that starts with precaution, allows targeted bans and effectively moves us from less safe to more safe products, we at the state level are forced to fight for and fund solutions on a patchwork basis, as more and more of us recognize that federal chemical policy does not provide the tools we need to carry out our missions to protect our citizens and environments. State by state, chemical by chemical approaches are not efficient or effective ways to address PBTs, which do not respect jurisdictional boundaries.

While I would much prefer a strong federal system, and at long last have great hopes for TSCA reform this year thanks to your interest and leadership, please keep in mind the critical role the states have played in advancing protections from PBTs and other toxic chemicals. Even with effective reform this year, if another 30 years go by before revisiting TSCA, we will need the states to fill in the gaps and serve as the laboratories of reform, and I ask you to preserve our ability to do so.

Because the need is so clear for federal reform, Washington and twelve other states issued in December our Principles for Reform of the Toxic Substances Control Act, outlining our hopes for

an effective federal chemicals management program, which I have provided with my written testimony.

I'd also like to speak to the politics of chemical policy. Not many years ago, toxics issues were widely perceived as being outside the mainstream. Battle lines were commonly drawn along ideological or partisan lines. I believe this has changed significantly in the past few years. As our scientific understanding of impacts from various chemicals has increased, as work on green chemistry and safer alternatives has progressed, and as the public has become aware of holes in the system designed to protect us from toxic exposures, the demand for action has risen dramatically, and not along party lines.

Rather than pitting jobs against the environment, intelligent reform protects both. When we identified a safer alternative to decaBDE, that alternative was being manufactured by some of the same companies that produced decaBDE. The choice is not about *whether* we are able to produce or use critical products like flame retardants, it is instead about using the *least harmful* of those products when it is warranted.

Our ban on decaBDE was a strongly bipartisan vote, and in the last few weeks, the Washington Legislature passed bills to ban certain products containing Bisphenol A by a 36-9 vote in the state Senate, and 95-1 in the state House. We did this with strong bipartisan votes because the bill made common sense – there is legitimate cause for concern over that chemical, and clearly safer alternatives exist for those products named.

There is nothing partisan about the principle of prevention, nor can I see an ideological divide over the principle that when safer alternatives are available that would allow us to avoid human and environmental harm, and save taxpayers money, we should use them.

As you contemplate reform of the Toxic Substances Control Act, I ask you to build a preventive framework that requires reasonable measures to show that chemicals are safe before they are allowed into widespread commerce.

And for those chemicals that are already out there among us, I ask you to create a system that prioritizes chemicals of concern, and provides effective tools to address them. For the worst of the worst, EPA needs to be able to ban them, with PBTs at the top of that list. For others, we need a clear means of determining whether safer alternatives exist, and a mechanism that moves us toward those safer choices.

I appreciate the opportunity to testify today, and I deeply appreciate your interest in strengthening our nation's approach to protecting our citizens and environment from avoidable toxic contamination.

STATES' PRINCIPLES ON REFORM OF THE TOXIC SUBSTANCES CONTROL ACT DECEMBER 2, 2009

Require Chemical Data Reporting. Chemical and product manufacturers should be required to develop and provide chemical health and safety information, as well as exposure and use data, including the presence of toxic chemicals in products and the associated chemical hazards and risks, to regulators, businesses, and the public.

Demonstrate Chemicals and Products are Safe. Manufacturers should provide the necessary information to regulators to conclude that new and existing chemicals and products in commerce are safe and do not endanger the public or the environment. The public has a right to expect that the products they use are safe.

Prioritize Chemicals of Concern. Government should identify and prioritize chemicals of concern in order to regulate the most problematic chemicals in commerce, and have the authority to take timely action to protect people and the environment. Sufficient resources should be made available to support these actions.

Protect the Most Vulnerable. Chemical regulation should be designed to protect the most vulnerable, including pregnant women and children.

Promote Safer Chemicals and Products. Based on green chemistry principles, manufacturers should be required to assess and identify safer alternatives to problematic chemicals of concern. Government should establish protocols for evaluating potential alternatives to chemicals of concern.

Address Emerging Contaminants. Emerging chemicals of concern, including nanoscale materials, need to be assessed for public and environmental safety before they go into widespread commerce and use.

Strengthen Federal Law & Preserve States' Rights. States acknowledge the need for a strong federal chemical regulation system, while expressly preserving the authority of state and localities to implement measures to manage chemicals of concern.

Fund State Programs. Effective state-federal governance should enhance the role of states in TSCA implementation, promote data and information sharing, and provide sustained funding for state programs. The states are in a unique position to provide innovative, cost-effective solutions for chemicals of concern prioritization, interstate data sharing, and safer chemical alternatives assessments.

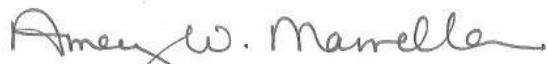
States' Principles on Reform of the Toxic Substances Control Act
December 2, 2009 State Signatures



Linda S. Adams, Secretary
California Environmental
Protection Agency



Thomas S. Burack, Commissioner
New Hampshire Department of
Environmental Services



Amey W. Marrella, Commissioner
Connecticut Department of
Environmental Protection



Mark N. Mauriello, Acting Commissioner
New Jersey Department of Environmental
Protection



Douglas P. Scott, Director
Illinois Environmental Protection Agency



Pete Grannis, Commissioner
New York State Department of
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David P. Littell, Commissioner
Maine Department of
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Dick Pedersen, Director
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Shari T. Wilson, Secretary
Maryland Department of the Environment



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